

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

26107

FILE: B-212044

DATE: August 29, 1983

MATTER OF: GM Industries, Inc.

DIGEST:

1. Protest initially filed with contracting agency must be filed with GAO within 10 working days from notification of the contracting agency's initial adverse action on the protest.
2. GAO will not consider the merits of a case where the protester is not in line for award even if its protest is sustained because the protester is not an interested party under GAO Bid Protest Procedures.

GM Industries, Inc. (GMI) protests the award of a contract for three engine lathes to Southern Machine Tool Company under invitation for bids (IFB) No. DAAA09-82-B-0798 issued by the U.S. Army Armament Materiel Readiness Command (now the U.S. Army Armament, Munitions and Chemical Command), Rock Island, Illinois. GMI contends that the lathes offered by the awardee, of foreign manufacture, did not meet the requirements of the solicitation. We dismiss the protest.

Our Bid Protest Procedures provide that if a protest has been filed initially with the contracting agency, any subsequent protest to this Office must be filed (received) within 10 working days of receipt of notice by the protester of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a) (1983). Here, the record establishes that GMI protested the award to the contracting officer on May 4, 1983. The Army's initial adverse action on the protest was contained in a letter from the contracting officer dated May 11 and received by GMI on May 16, which the protester concedes indicates the protest "cannot be honored." While the letter allegedly contained no details, GMI was nevertheless on notice of the denial on May 16. GMI's subsequent protest to this Office was not received until June 8. Therefore, the protest was not filed within the 10-day period and is clearly untimely. Gulf Systems, Inc., B-210080, January 6, 1983, 83-1 CPD
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We also point out that irrespective of the timeliness issue, we would not consider the merits of the case because GMI is the fourth low bidder and therefore not in line for award. That is, GMI is not an interested party as that term is used in our procedures because even if we were to sustain the protest, there remain two other bidders lower than GMI to whom award could be made under the solicitation. Ven-Tel, Inc., B-204233, March 8, 1982, 82-1 CPD 207; International Business Investments, B-202164.2, June 8, 1981, 81-1 CPD 459.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel